

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH

RICARDO NOBLE,)
Plaintiff,)
vs.)
JOHN WETZEL, SECRETARY OF PA)
D.O.C.; ROBERT GILMORE, SCI GREENE)
SUPERINTENDENT; MARIA)
BALESTRIERI, GREENE PRISON)
COUNSELOR; STEVE LONGSTRETH,)
SCI GREENE PRISON COUNSELOR;)
MICHAEL STELLA, SCI GREENE)
PRISON COUNSELOR; ERICKSON, SCI)
GREENE PRISON COUNSELOR; AND)
PROGRAM REVIEW COMMITTEE,
Defendants,

)
2:18-CV-01160-MJH

MEMORANDUM ORDER

This case has been referred to United States Chief Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72 of the Local Rules for Magistrate Judges.

On August 1, 2019, the Magistrate Judge issued a Report and Recommendation, ECF No. 45, recommending that Defendants' Motion to Dismiss, ECF No. 29, be granted, and particularly 1) granting leave to amend as to the following claims: the Eighth Amendment condition of confinement claim, the Equal Protection claim, the First Amendment/RLUIPA religious freedom claim, and the conspiracy claim; and 2) dismissing, but denying any leave to amend as futile, any claims against the PRC, the condition of confinement claim under the due process clause of the 14th Amendment, the procedural due process clause claim under the 5th Amendment, the 6th Amendment claim, the claims brought against the individual DOC Defendants in their official

capacities, the claims against Defendants Gilmore and Wetzel in their supervisory capacity, claims concerning the violation of the DOC Code of Ethics and Policies, and those claims which as alleged are barred by the statute of limitations.

The parties were advised that written objections to the Report and Recommendation were due by August 15, 2019, and for non-ECF filers, such as Plaintiff, Objections were due by August 19, 2019. Plaintiff timely mailed Objections, which were filed on the docket on August 15, 2019. (ECF No. 49). Plaintiff's Objections do not undermine the recommendation of the Magistrate Judge.¹

Accordingly, after *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 10th day of September, 2019, it is hereby ORDERED as follows:

The Magistrate Judge's Report and Recommendation, ECF No. 45, dated August 1, 2019, is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss, ECF No. 29, is GRANTED.

IT IS FURTHER ORDERED that:

1. Plaintiff shall have leave to amend as to the following claims: the Eighth Amendment condition of confinement claim, the Equal Protection claim, the First Amendment/RLUIPA religious freedom claim, and the conspiracy claim. Any amendment shall be mailed within fourteen (14) days of Plaintiff's receipt of this Order; and

¹ In his objections, the Plaintiff notes that the Report and Recommendation describes his sentence as four years to life rather than forty years to life. The Court finds the discrepancy no more than a typographical error that bears no impact on the Court's disposition of Defendants' Motion.

2. The PRC, the condition of confinement claim under the due process clause of the 14th Amendment, the procedural due process clause claim under the 5th Amendment, the 6th Amendment claim, the claims brought against the individual DOC Defendants in their official capacities, the claims against Defendants Gilmore and Wetzel in their supervisory capacity, claims concerning the violation of the DOC Code of Ethics and Policies, and those claims which as alleged are barred by the statute of limitations are dismissed and any leave to amend is deemed futile.

By the Court:



Marilyn J. Horan
United States District Judge

cc: Ricardo Noble
BX-9351
SCI Greene
175 Progress Drive
Waynesburg, PA 15370